

APPEAL NO. 031376  
FILED JULY 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 2, 2003. The hearing officer determined that the respondent/cross-appellant's (claimant) compensable injury extended to and includes a lumbar spine strain injury, but does not extend to and include depression, injury to the right shoulder or arm, urological problems, a closed head injury, and a thoracic injury. Additionally, the hearing officer determined that the claimant was not entitled to change treating doctors, that the issues of maximum medical improvement (MMI) and impairment rating (IR) were not ripe for adjudication and ordered the Texas Workers' Compensation Commission (Commission) to send the claimant back to the designated doctor to be evaluated under the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The claimant appeals the extent-of-injury determinations as against the great weight of evidence, except for the lumbar sprain injury, and the determination that she is not entitled to change treating doctors. The appellant/cross-respondent (self-insured herein) appeals the determination that the claimant's compensable injury extends to and includes a lumbar strain injury, as against the great weight of evidence and urges affirmance of the rest of the hearing officer's determinations. The hearing officer's determination that the issues of MMI and IR were not ripe for adjudication and her decision to have the claimant evaluated by the designated doctor using the 3rd Edition of the AMA Guides were not appealed and have now become final. Section 410.169.

DECISION

Affirmed in part and reversed and rendered in part.

We first address the extent-of-injury determinations. Extent of injury is a factual question for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). It is for the hearing officer to resolve the inconsistencies and conflicts in the evidence and to decide what facts the evidence has established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This includes the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In this instance, the hearing officer was not persuaded that the claimant sustained her burden of proving the causal connection between her compensable injury and the complained-of injuries except for the lumbar spine strain injury. The hearing officer was acting within her province as the fact finder in so finding. Nothing in our review of the record reveals that the hearing officer's extent-of-injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to reverse that determination on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We next address the claimant's right to change treating doctors. The record contains an Employee's Request to Change Treating Doctors (TWCC-53) filed by the claimant with an attached letter from the treating doctor [Dr.V] explaining to the claimant's attorney that the treating doctor was not being paid by the carrier and would no longer treat the claimant. The Commission approved this request over the carrier's objection. The hearing officer found that the claimant "changed treating doctors to [Dr. S] because [Dr. V] declined to further treat the claimant because [Dr.V] was not being paid by the carrier for these treatments." The hearing officer went on to apply Section 408.022(c) that lists the criteria for granting the claimant the authority to change treating doctors and determined that the claimant did not have a problem with [Dr.V's] treatment or that there existed a conflict between them and found that lack of payment under Section 408.022(c) is not a basis for changing treating doctors and the Commission should not have allowed the claimant to change treating doctors. While we agree that lack of payment is not listed as a criteria in Section 408.022(c), we disagree with the hearing officer's decision to apply Section 408.022(c) while ignoring Section 408.022(e)(4)(C). Section 408.022(e)(4)(C) expressly provides that the selection of a doctor because the original doctor becomes unavailable or unable to provide medical care to the employee is not a selection of an alternate doctor. We view this provision as applicable in the circumstances of this case. A doctor who refuses to treat a patient because of lack of payment becomes unavailable to that patient and a request to change to another treating doctor does not constitute a request to change to an alternate doctor and is not governed by Section 408.022(c). The Commission did not err in approving the claimant's request to change doctors in this case. In Texas Workers' Compensation Commission Appeal No. 020022, decided February 14, 2002, the Appeals Panel remanded the case for the hearing officer to apply the criteria in Section 408.022(c) as well as to determine *whether the treating doctor chose not to be responsible for coordinating the claimant's health care*. Since the hearing officer, as the fact finder, determined that the lack of payment was the sole reason that the doctor/patient relationship was terminated in this case, we do not feel compelled to remand this case for her further action. We reverse the hearing officer's decision that the claimant is not entitled to change treating doctors and render a decision that the Commission was correct in approving the claimant's request for a new doctor.

The hearing officer's decision and order regarding the extent-of-injury determinations are affirmed. The hearing officer's decision and order that the claimant is not entitled to change treating doctors is reversed and a new decision and order is now rendered approving the Commission's decision allowing the claimant to change treating doctors.

The true corporate name of the self-insured is **(a certified self-insured)** and the name and address of its registered agent for service of process is

**CORPORATION INSURANCE COMPANY  
800 BRAZOS, COMMODORE 1, SUITE 750  
AUSTIN, TEXAS 78701.**

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Gary L. Kilgore  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Edward Vilano  
Appeals Judge